

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2007 FEB -9 PM 4:49

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

TRUETT (BUCK) HUX III

VS.

CIT FINANCIAL USA, INC. D/B/A/
LEASE FINANCE GROUP and
LEASE FINANCE GROUP, LLC

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§
§

SA07CA0133 FB
CIVIL ACTION NO. _____

NOTICE OF REMOVAL OF ACTION

TO: The United States District Court for the Western District of Texas.

CIT Financial USA, Inc. d/b/a Lease Finance Group ("CIT") and Lease Finance Group, LLC ("Lease Finance") (collectively, the "Defendants") in the above-captioned matter, file this Notice of Removal to the United States District Court for the Western District of Texas, San Antonio Division and would respectfully show the Court as follows:

I.

STATE COURT PROCEEDING

On January 3, 2007, Plaintiff Truett (Buck) Hux III (hereafter "Plaintiff") commenced an action against Defendants in the 22nd Judicial District Court of Comal County, Texas, styled *Truett (Buck) Hux III v. CIT Financial USA, Inc. d/b/a Lease Finance Group and Lease Finance Group, LLC*, Cause No. C 2007-0001A (the "State Court Action"). Plaintiff alleges causes of action for defamation, libel *per se*, defamation *per se*, business disparagement and other injunctive and equitable relief relating to his lease and failure to pay for credit card processing equipment. No responsive pleadings have been filed yet in the state court, and Defendants will timely file their responses to Plaintiff's Original Petition with this Court in compliance with Fed. R. Civ. P. 81(c).

In the meantime, Defendants hereby give notice to the Court and to Plaintiffs of their intention to invoke the arbitration provisions of the parties' respective contracts with regard to these proceedings. An appropriate motion to compel arbitration will be forthcoming, if necessary.

II.

JURISDICTIONAL BASIS FOR REMOVAL

A. Diversity of Citizenship Exists

This Court has original subject matter jurisdiction over the State Court Action pursuant to 28 U.S.C. §1332, and it may be removed to this Court pursuant to 28 U.S.C. §1441(b). Plaintiff's Original Petition alleges that he is an individual and resident of Comal County, Texas.

Defendant CIT Financial USA, Inc. is a Delaware corporation, and has its principal place of business at 1 CIT Drive, Livingston, NJ 07039 and Defendant Lease Finance Group, LLC is a Delaware limited liability company, and has its principal place of business at 132 West 31st Street, NY, NY 1000. Accordingly, Defendants are not citizens of the State of Texas, and the requisite diversity of citizenship exists between Plaintiff and Defendants in this case.

B. Amount in Controversy Exceeds \$75,000

Plaintiff's Original Petition asserts damages in an amount totaling not less than \$50,000, and other equitable relief "to which a monetary value cannot be assessed." However, Plaintiff's first demand letter clarified the actual amount of his claims where he demanded \$500,000 to settle these claims. (Exhibit A). Therefore, the amount in controversy is well in excess of the jurisdictional minimum of \$75,000.00 for the Court to exercise diversity jurisdiction.

Accordingly, this civil action is wholly between citizens of Texas and Delaware, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

Therefore, this Court has original jurisdiction pursuant to 28 U.S.C. §1332, thereby making this action removable pursuant to 28 U.S.C. §1441.

Nothing contained in this Notice of Removal shall be construed to concede that any amount is or will be owing to Plaintiff, or that it is appropriate or justified for Plaintiff to pursue this action in any court in the State of Texas or to seek any particular amount of damages¹.

C. Removal Timely

The State Court Action was filed on January 7, 2007, and Defendants first received notice of same when Defendant CIT was served with process on January 10, 2007. This removal is therefore timely, being filed less than thirty (30) days from the filing of suit and Defendants' notice thereof. 28 U.S.C. §1446(b).

**III.
PROCEDURAL REQUIREMENTS**

CIT and Lease Finance are the only Defendants in this case, and therefore, no other Defendants consent to this removal is required.

Pursuant to 28 U.S.C. §1446(d), Defendants, the removing parties, will promptly give Plaintiff written notice of the filing of this Notice of Removal. Also, pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a copy of this Notice of Removal with the Clerk of the 22nd Judicial District Court of Comal County, Texas, where the action is pending.

A certified copy of the docket sheet and the state court pleadings and orders are attached to this Notice of Removal as Exhibit B pursuant to 28 U.S.C. §1446(a).

¹ Defendants, by filing this Notice of Removal, expressly do not waive any objections to service of process or challenges to personal jurisdiction or venue. *City of Clarksdale v. Bellsouth Telecomms., Inc.*, 428 F.3d 206, 214, n.15 (5th Cir. 2005).

WHEREFORE, Defendants pray that the above-described civil action be removed from the 22nd Judicial District Court of Comal County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

By: 

Wm. Bruce Stanfill
Texas Bar No.: 19034350
Federal Bar No: 8899
1300 Post Oak Boulevard, Suite 2500
Houston, Texas 77056-3000
Telephone: (713) 623-0887
Facsimile: (713) 960-1527

**ATTORNEY-IN-CHARGE FOR DEFENDANTS
CIT FINANCIAL USA, INC. D/B/A/ LEASE
FINANCE GROUP AND LEASE FINANCE
GROUP, LLC**

OF COUNSEL:

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Houston, Texas 77056-3000
Telephone: (713) 623-0887
Facsimile: (713) 960-1527

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing instrument was delivered to the undersigned counsel via facsimile and certified mail, return receipt requested on this 7th day of February 2007.

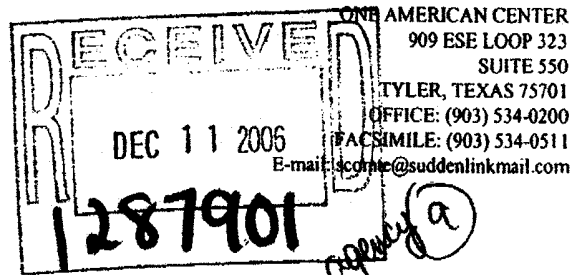
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FAYE B. COMTE
ERIC A. JACOBS
SHANE MCGUIRE
STEVEN W. COMTE
*Partner



FROM THE DESK OF:
STEVEN W. COMTE

December 6, 2006

CIT Financial USA, Ltd.
Attn: Legal Department
1 CIT Drive
Livingston, NJ 07039

Lease Finance Group LLC
Attn: Legal Department
233 N. Manhattan Ave., Suite 1800
Chicago, Illinois 60601

Re: Defamation and Business Disparagement Claims

Dear Sir or Madam:

This firm has been retained by Mr. Truett (Buck) Hux, III to prosecute his complaint and causes of action against CIT Financial USA, Inc. d/b/a Lease Finance Group LLC (hereinafter "CIT Financial") for defamation and business disparagement.

The facts which give rise to this complaint are as follows:

On or about January 11, 2005, Mr. Hux was approached by a representative of CIT Financial regarding an offer to lease equipment to be used for credit card service in Mr. Hux's business, Rough & Ready Outfitters, Inc. On that same date, Mr. Hux agreed to accept the services offered by CIT Financial, *if and only if*, CIT Financial provided the necessary equipment and service prior to January 22, 2005, the date of Grand Opening of Rough & Ready Outfitters, Inc. Mr. Hux's conditional acceptance was communicated directly to CIT Financial's representative. CIT Financial's representative assured Mr. Hux that the equipment and service would be provided prior to January 22, 2005. Relying upon the assurances of CIT Financial's representative, Mr. Hux signed the lease agreement on January 11, 2005.

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DALLAS, TEXAS
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WILLOW PARK, TEXAS
(817) 226-1953

EXHIBIT A

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CIT Financial failed to provide the requisite equipment and service by January 22, 2005. Consequently, Mr. Hux communicated to CIT Financial's representative that the conditions of Mr. Hux's acceptance had not been met and that Mr. Hux would not accept or use the equipment or services to be provided by CIT Financial under the proposed Lease. Despite Mr. Hux's refusal of the equipment and service, CIT Financial shipped the equipment to Mr. Hux via DHL delivery service. Mr. Hux refused delivery from DHL and signed the necessary paperwork evidencing his refusal. DHL returned the equipment to CIT Financial.

CIT Financial disregarded Mr. Hux's refusal and return of the equipment and began to charge Mr. Hux for services under the purported Lease. Mr. Hux refused to pay for the services, which he did not use, asserting that the lease was not an enforceable contract. Shortly thereafter, CIT Financial began sending Mr. Hux collection notices, which threatened harm to Mr. Hux's credit rating if he did not pay the claimed debt.

On or about July 1, 2006, CIT Financial notified credit reporting agencies that Mr. Hux had not paid monies claimed by CIT Financial under the purported Lease. In addition, CIT Financial notified the credit reporting agencies that CIT Financial had submitted Mr. Hux's account for collection. As a result, a notice of collection was added to Mr. Hux's credit reports. Mr. Hux did not become aware of CIT Financial's defamatory statements until 10/23/2006, when he attempted to obtain financing for multiple investment opportunities.

The financing sought by Mr. Hux was for the purchase of property in Comal County, Texas. As a result of the collection shown on Mr. Hux's credit reports, Mr. Hux was unable to obtain suitable financing for the purchase of the property in Comal County. The lender notified Mr. Hux that he could have obtained suitable financing for the properties if not for the collection shown on his credit reports.

Due to CIT Financial's actions, Mr. Hux lost multiple business opportunities and suffered irreparable harm to his reputation and his economic interests. CIT Financial's malicious conduct has resulted in monetary loss to Mr. Hux in excess of \$2,000,000.00

This letter constitutes notice and demand of Mr. Hux's claims of defamation and business disparagement against CIT Financial. Mr. Hux demands that CIT Financial immediately:

1. take appropriate steps to remove the notice of collection from Mr. Hux's personal credit reports;
2. cease and desist all collection efforts against Mr. Hux;
3. release Mr. Hux from any alleged duties under the proposed lease dated January 11, 2005; and

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4. pay Mr. Hux \$500,000 for damage to Mr. Hux's reputation and economic interests caused by CIT Financial's malicious actions.

This offer of settlement shall remain open for ten (10) days from the date set out above. CIT Financial's failure to respond within the prescribed time period will result in immediate legal action in which Mr. Hux will pursue all legal actions and remedies to which he is entitled. A copy of the Petition to be filed in this matter is attached hereto as **Exhibit "A"**.

Mr. Hux desires a speedy resolution of this matter. You may respond by contacting me at (903) 534-0200.

Thank you for your time and attention to this matter. I look forward to your response.

Best regards,



Steven W. Comte

SWC/mh

JUDGE'S CIVIL DOCKET, DISTRICT COURT, COMAL COUNTY, TEXAS

DISTRICT COURT 22nd

Truett (Buck) June III vs. CIT Financial USA, Inc. dba: Lease Finance Corp

NO. C-07-001A

Jury Fee by Pl.

1-3-07

Jury Fee by Dt.

File Date

Atty. for Dt.

Atty. for Pl.

JUDGE'S INITIALS

DATE

ORDERS OF COURT

EXHIBIT B

STATE OF TEXAS

COUNTY OF COMAL

I certify this to be a true and correct copy of the record FILED & RECORDED in the Official Court records of District Court on this date and time stamped thereon.



Kathy H. Faulkner

Comal County District Clerk

By: Linda Lopez 2-1-07